

University of California, Hastings College of the Law UC Hastings Scholarship Repository

Initiatives

California Ballot Propositions and Initiatives

2-19-2008

EMINENT DOMAIN. TAKING PROPERTY FOR PRIVATE OWNERSHIP. STATUTE.

Follow this and additional works at: http://repository.uchastings.edu/ca_ballot_inits

Recommended Citation

EMINENT DOMAIN. TAKING PROPERTY FOR PRIVATE OWNERSHIP. STATUTE. California Initiative 1331 (2008).
http://repository.uchastings.edu/ca_ballot_inits/1525

This Initiative is brought to you for free and open access by the California Ballot Propositions and Initiatives at UC Hastings Scholarship Repository. It has been accepted for inclusion in Initiatives by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.




DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

August 15, 2008

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS AND
PROPOSERS (08252)

FROM:


KATHERINE MONTGOMERY
Associate Elections Analyst

SUBJECT: Initiative: Failure of #1331, Related to Eminent Domain

Pursuant to Elections Code section 9030(b), you are hereby notified that the total number of signatures to the hereinafter named statute filed with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore, the petition has **failed**.

TITLE: EMINENT DOMAIN. TAKING PROPERTY FOR PRIVATE
OWNERSHIP. STATUTE.

SUMMARY DATE: February 19, 2008

PROPOSERS: Don H. Lippman and Christopher A. Sutton



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

February 19, 2008

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS/PROPONENTS
(08071)

FROM:


KATHERINE MONTGOMERY
Elections Analyst

SUBJECT: **INITIATIVE #1331**

Pursuant to Elections Code section 336, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed initiative measure entitled:

**EMINENT DOMAIN. TAKING PROPERTY
FOR PRIVATE OWNERSHIP. STATUTE.**

The proponents of the above-named measure are:

Don H. Lippman
Christopher A. Sutton
2181 East Foothill Boulevard, Suite 202
Pasadena, CA 91107-6825

(626) 683-2500

#1331

**EMINENT DOMAIN. TAKING PROPERTY
FOR PRIVATE OWNERSHIP. STATUTE.**

CIRCULATING AND FILING SCHEDULE

1. Minimum number of signatures required: 433,971
California Constitution, Article II, Section 8(b)
2. Official Summary Date: Tuesday, 02/19/08
3. Petitions Sections:
 - a. First day Proponent can circulate Sections for
signatures (Elec. Code § 336) Tuesday, 02/19/08
 - b. Last day Proponent can circulate and file with the county.
All sections are to be filed at the same time within each
county. (Elec. Codes §§ 336, 9030(a)). Friday, 07/18/08
 - c. Last day for county to determine total number of
signatures affixed to petitions and to transmit total
to the Secretary of State (Elec. Code § 9030(b))..... Wednesday, 07/30/08

(If the Proponent files the petition with the county on a date prior to
07/18/08, the county has eight working days from the filing of the petition
to determine the total number of signatures affixed to the petition and to
transmit the total to the Secretary of State) (Elec. Code § 9030(b)).
 - d. Secretary of State determines whether the total number
of signatures filed with all county clerks/registrars of
voters meets the minimum number of required signatures
and notifies the counties..... Friday, 08/08/08*
 - e. Last day for county to determine total number of qualified
voters who signed the petition, and to transmit certificate
with a blank copy of the petition to the Secretary of State
(Elec. Code § 9030(d)(e)) Tuesday, 09/23/08

*Date varies based on the date of county receipt.

INITIATIVE #1331
Circulating and Filing Schedule continued:

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 08/08/08, the last day is no later than the thirtieth working day after the county's receipt of notification). (Elec. Code § 9030(d)(e)).

- f. If the signature count is more than 477,369 or less than 412,273 then the Secretary of State certifies the petition as qualified or failed, and notifies the counties. If the signature count is between 412,273 and 477,369 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures (EC §9030(f)(g); 9031(a))..... Friday, 10/03/08*

- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State. (Elec. Code § 9031(b)(c)). Tuesday, 11/18/08

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 09/26/08, the last day is no later than the thirtieth working day after the county's receipt of notification.) (Elec. Code § 9031(b)(c).)

- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient (Elec. Code §§ 9031(d), 9033) Saturday, 11/22/08*

*Date varies based on the date of county receipt.

IMPORTANT POINTS

- California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fundraising or requests for support. Any such misuses constitutes a crime under California law. Elections Code section 18650; *Bilofsky v. Deukmejian* (1981) 124 Cal.App.3d 825, 177 Cal.Rptr. 621; 63 Ops.Cal.Atty.Gen. 37 (1980).
- Please refer to Elections Code sections 100, 101, 104, 9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- Your attention is directed to the campaign disclosure requirements of the **Political Reform Act of 1974**, Government Code section 81000 et seq.
- When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- When filing the petition with the county elections official, please provide a blank petition for elections official use.

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 445-4752
Facsimile: (916) 324-8835
E-Mail: Krystal.Paris@doj.ca.gov

February 19, 2008

FILED
In the office of the Secretary of State
of the State of California

FEB 19 2008

Debra Bowen
Secretary of State
1500 - 11th Street, 5th Floor
Sacramento, CA 95814

Debra Bowen, Secretary of State
By 
Deputy Secretary of State

RE: Title and Summary for Initiative No. 07-0099
TITLE: EMINENT DOMAIN. TAKING PROPERTY FOR PRIVATE OWNERSHIP.
STATUTE.

Dear Ms. Bowen:

Pursuant to Elections Code sections 9004 and 336, you are hereby notified that on this day we mailed our title and summary of proposed initiative 07-0099 to the respective proponents.

Enclosed is a copy of that title and summary, and a copy of the proposed measure.

Sincerely,



KRYSTAL PARIS
Initiative Coordinator

For EDMUND G. BROWN JR.
Attorney General

Enclosures

Proponents' public contact information:

Don H. Lippman
Christopher A. Sutton
Law Office of Christopher Sutton
2181 East Foothill Blvd., Suite 202
Pasadena, CA 91107-6825
(626) 683-2500

Date: February 19, 2008
Initiative No.: 07-0099

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

EMINENT DOMAIN. TAKING PROPERTY FOR PRIVATE OWNERSHIP. STATUTE.

Changes procedures for condemning property if property will not be owned and permanently used by the acquiring public entity. Requires government to prove by clear and convincing evidence that property is needed for public use and condemnation will benefit a significant segment of public with no disproportionate benefit to private person or group. Eliminates presumption in favor of government and requires issues regarding use and compensation be decided by jury. Limits condemnation to needed part of property and allows property owners who successfully defend against condemnation to recover litigation expenses. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Probably no significant net fiscal impact on state and local governments.

(Initiative 07-0099.)

LAW OFFICE OF
CHRISTOPHER SUTTON
2181 EAST FOOTHILL BOULEVARD, SUITE 202
PASADENA, CALIFORNIA 91107-6825
TELEPHONE (626) 683-2500 ... FACSIMILE (626) 405-9843

07-0099
RECEIVED

DEC 18 2007

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

December 4, 2007

Krystal M. Paris
Initiative Coordinator
Office of Attorney General
Edmund G. Brown, Jr.
1300 I Street
Sacramento, California 95814

Telephone: (916) 445-4152
Facsimile: (916) 324-8835

Re: Statutory Initiative Measure: EMINENT DOMAIN PROTECTION ACT

Dear Ms. Paris:

Pursuant to the California Elections Code and the California Constitution the undersigned persons respectfully request that the Attorney General prepare a title and summary of the chief purposes and points of the proposed ballot measure entitled EMINENT DOMAIN PROTECTION ACT enclosed herewith. The undersigned persons are the proponents of the measure.

Any correspondence regarding this initiative measure should be directed to this office at: Christopher Sutton, 2181 East Foothill Boulevard, Suite 202, Pasadena, California 91107-6825, Telephone (626) 683-2500. The residence addresses of the proponents are attached to this letter.

Enclosed is the required \$200 filing fee by check made payable to the State of California as provided in Elections Code section 9003.

Sincerely,

Sincerely,

Don H. Lippman

Christopher A. Sutton

Enclosed: 1. List of residence addresses
2. Text of proposed initiative measure

SECTION 1. (a) The California Constitution and the United States Constitution both provide that no person shall be deprived of life, liberty or property without due process of law. Despite these Constitutional goals, courts and public entities have not provided full due process of law to persons defending themselves in eminent domain lawsuits.

(b) Various public entities use a procedural mechanism against property owners and tenants in eminent domain lawsuits known as a "conclusive presumption" that may deny these defendants a full ability to place evidence before the court to show that it is not proper to apply eminent domain to their property.

(c) The courts in eminent domain lawsuits often place the burden of proof on the defendant, and not on the acquiring entity, and courts may prohibit a jury from hearing all the evidence and deciding whether the particular eminent domain lawsuit is fair and proper and whether the compensation offered for the property is just.

SECTION 2. (a) It is the intent of the people in enacting this act:

(1) To prohibit any presumption favoring the finding of a public use in an eminent domain lawsuit when a defendant's property, if taken, will not be owned and used permanently by the entity exercising the power of eminent domain.

(2) To require that the burden of proof and persuasion of all issues of public use in an eminent domain lawsuit be on the plaintiff and not on the defendant.

(3) To require that the right to trial by jury fully applies to all evidence and all factual issues in an eminent domain lawsuit.

(b) The people of the State of California, therefore, hereby enact this measure which shall be known and may be cited as the Eminent Domain Protection Act.

SECTION 3. Article 1.5 (commencing with Section 1240.080) is added to Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure, to read:

Article 1.5. Specific Limitations on the Power of Eminent Domain

1240.080. Notwithstanding any other provision of law to the contrary, if an interest in property to be acquired by the power of eminent domain will not be owned and used permanently by the entity exercising that power, the following rules shall apply:

(a) No presumption of any kind shall be applied to support an allegation that the proposed project or the future use of the defendant's property is a public use.

(b) The burden of producing evidence, the burden of proof, and the burden of persuasion on all issues of public use to be decided by the trier of fact shall be on the plaintiff seeking to take a defendant's property.

(c) All evidence offered to prove or disprove any alleged public use or any alleged necessity that a defendant's interest in the property is needed for a public use shall be heard and decided by a jury as a civil matter as provided in Section 16 of Article 1 of the California Constitution.

(d) (1) The jury that hears an eminent domain proceeding that is within the provisions of this article may find in favor of the existence of a public use, or that the defendant's interest in the property is necessary to be acquired for that public use, only upon proof, established by clear and convincing evidence, of all of the facts described in subparagraphs (A) to (E), inclusive.

(A) A significant segment of the public within the county where the property is located will benefit from the proposed future use of the property.

(B) The proposed future use of the defendant's property will not disproportionately benefit one private person or entity or a select group of private persons or entities.

(C) The plaintiff is not acquiring more of the defendant's property than is actually needed.

(D) At all times prior to and during the proceeding, the plaintiff provided for complete, accurate, and detailed notices and information to be personally delivered to the defendant, and the plaintiff gave the notices and information to the defendant reasonably in advance of each decision by the plaintiff on the location and design of the project.

(E) The plaintiff completely and accurately described how the compensation and relocation benefits being offered to the defendant were calculated.

(2) If the jury fails to find any of the facts described in subparagraphs (A) to (E), inclusive, to be established by clear and convincing evidence, it shall determine that the plaintiff may not acquire the defendant's interest in the property, and the jury's verdict shall be entered as the judgment of the court.

(e) The same jury shall hear all evidence and decide all issues of public use, necessity, and just compensation regarding the defendant's interest in the property.

(f) A party's presentation of evidence shall be limited only for reasons of redundancy or relevancy to the subject matter.

(g) A factual determination by a jury under this section shall not be questioned either by the court or in an appeal unless it is clearly erroneous.

1240.090. If an interest in property to be acquired by the power of eminent domain is subject to the requirements of Section 1240.080, the following provisions shall apply:

(a) A jury shall hear and determine all objections to the plaintiff's right to take the defendant's property.

(b) If the jury determines that the plaintiff has the right to acquire by eminent domain the defendant's property described in the complaint, the court shall so order.

(c) If the jury determines that the plaintiff does not have the right to acquire by eminent domain any part or interest in the defendant's property described in the complaint, the court shall order either of the following:

(1) Immediate dismissal of the proceeding as to that property.

(2) Conditional dismissal of the proceeding as to that property unless any corrective and remedial action that the court may prescribe has been taken within the period prescribed by the court in the order.

(d) An order made under subdivision (c) shall, at a minimum, require that the plaintiff pay to the defendant all the reasonable litigation expenses necessarily incurred by the defendant and may impose other limitations and conditions that the court determines to be just under the circumstances of the particular case.

SECTION 4. The Legislature may adopt statutes to further the purposes of this measure and to aid in its implementation. No statute may be enacted that would directly or indirectly repeal or contradict the provisions of this measure except by vote of the people.

SECTION 5. The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 6. The measure shall become effective the day following the election when it is approved by the voters, and its terms shall apply to any eminent domain proceeding then pending in any court that has not reached a final judgment, including any appeals.